

Procedures/Guidelines for drafting Planning Board opinions

Legal Staff has developed opinion templates for decisions in certain pre-preliminary plan and all preliminary plan and site plan cases, which templates track the requisite findings for each Board approval. (See Attachments.) Following a Planning Board meeting, typically conducted every Thursday, the Commission's technical writer who attended the day's public hearings will post the Board's vote on a database. The Development Review staffperson who reviewed the case will incorporate the latter information into an initial draft, which will also include a description of the subject property and the proposed development; discussion of the evidence of record and testimony at the public hearing; findings of fact; conclusions of law; and any conditions of approval, if applicable. This initial draft is forwarded to Legal Staff for review.

The attorney who attended the public hearing on a case reviews the initial draft opinion and documents contained in the Development Review Division public file on the case and listens to an audiotape of the hearing on the case. Legal Staff will edit the initial draft to ensure that it is a legally sufficient memorialization of the Board's action. The reviewing attorney then prints an adoption draft and stamp/sign the document for legal sufficiency. The adoption draft opinion is subsequently forwarded to the Planning Board for review, generally on a Friday, along with the Board's regular packet of items that will be on the agenda the following Thursday.

Occasionally, changes are recommended by Planning Board members and, if supported by the record, are incorporated in a blacklined second draft for review and approval by the Planning Board. Time is reserved at each regularly scheduled Thursday meeting for the Board's adoption of opinions. In accordance with the Board's Rules of Procedure, those Board members who were present and voted on a particular case may vote to adopt the opinion for that case, which vote is recorded by the attending technical writer.

Following adoption, Legal Staff forwards the final opinion, which is stamped and signed for legal sufficiency, to the technical writers who will certify the Board's vote adopting the opinion and will attach and sign a certification sheet. Certified opinions are forwarded to the Development Review Division for mailing to all parties and other interested persons included on the project mailing list.

NOT ADOPTED
DRAFT OPINION

Date Mailed: *[insert date]*

Action: Approved [*or disapproved*]
Staff Recommendation

Motion of Commissioner *[insert name]*,
seconded by Commissioner *[insert name]*, with a vote of **[X-X]**;
Chairman Berlage and Commissioners.
[insert name], *[insert name]*, *[insert name]*, *[insert name]*, and *[insert name]* voting in favor. *[insert name of any Commissioners voting against, abstaining or absent]*

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-*[insert number]*
NAME OF PLAN: *[insert name]*

The date of this written opinion is **[insert date]** (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

On **[insert date]**, **[insert Applicant's name]** submitted an application for the approval of a preliminary plan of subdivision of property in the **[insert zone]** zone. The application proposed to create **[insert number]** lots on **[insert number]** acres of land located at **[insert property location here]**, in the **[insert name of master plan area]**. The application was designated Preliminary Plan 1-**[insert number]**. On **[insert date]**, Preliminary Plan 1-**[insert number]** was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the

information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The Preliminary Plan No. 1-[insert number] substantially conforms to the ***[insert name of applicable master, sector or urban renewal plan]***.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lot[s] are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) **[If water quality plan is required]** The application satisfies all the applicable requirements of Montgomery County Code Chapter 19, Article V (Water

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

Quality Review in Special Protection Areas). This finding is subject to any applicable condition(s) of approval.

- g) **[if a RESUBDIVISION, insert the following language:]** As set forth in detail below, the proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing **[PICK APPLICABLE ONE: block, neighborhood or subdivision]**, as delineated in the Staff Report dated, **[insert date]**:

[insert the analysis section of the Staff Report here, with appropriate modifications]

- h) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

[if the case contains any contested issues (raised before or during the hearing), substitute the following language: "The Record of this application contains only the following contested issue[s]:

[List the contested issues here and discuss the Board's position on those issues]

[insert the following language following the discussion of contested issue(s)] "The Board further finds that any objection (concerning a substantive issue) that was not raised prior to the closing of the Record is waived."

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-**[insert number]** in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-**[insert number]**, subject to the following conditions:

[insert conditions]

[FOR SINGLE-PHASE PROJECTS:] This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

[The Code requires separate validity periods for each phase of a MULTI-PHASE PROJECTS—see Legal Staff for validity period language for such approvals]

* * * * *

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday, ***[insert date]***, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of Commissioner ***[insert name]***, seconded by Commissioner ***[insert name]***, with Commissioners ***[insert names]*** voting in favor of the motion, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law in Preliminary Plan No. ***[insert #]***.

[THW's signature]

[insert name of Technical Hearing Writer]
Technical Hearing Writer

TEMPLATE: PRE-PRELIMINARY PLAN OPINION
FOR RDT ZONED PROPERTY

Date Mailed:

Hearing Date:

Action: Approved Staff

Recommendation

Motion of Comm. XXX, seconded by

Comm. XXX with a vote of XX;

Comms. XXX, XXX, XXX and XXX

voting in favor; Comm. XXX absent

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Pre-Preliminary Plan: _____

NAME OF PLAN: _____

The date of this written opinion is _____ (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

On _____, _____ submitted an application for the approval of a pre-preliminary plan. The application proposed to create _____ on _____ acres of land in the _____ zone located _____ ("Subject Property"). The application was designated Pre-Preliminary Plan _____ ("Pre-Preliminary Plan"). On _____, the Pre-preliminary Plan was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Pre-Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the

application; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

The Pre-Preliminary Plan was brought before the Planning Board as a request to allow the lot to be platted under the minor subdivision process. Pursuant to Section 50-35A(a)(8) of the Subdivision Regulations, up to five (5) lots may be platted in the RDT zone through the minor subdivision process after Planning Staff or Planning Board approval of a pre-preliminary plan. Pursuant to Section 50-35A(a)(8)(d), these lots must not exceed an average lot size of five (5) acres in size unless approved by the Planning Board.

SITE DESCRIPTION

[Site Description section from staff report.]

PROJECT DESCRIPTION

[Project Description section from staff report.]

STAFF'S RECOMMENDATION

[Analysis and Conclusion sections from staff report.]

PLANNING BOARD HEARING

[Summarize testimony and evidence at hearing.]

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that, with the conditions of approval:

- a) Prior to record plat, there will be written approval for a proposed septic area from the Montgomery County Department of Permitting Services, Well and Septic Section.
- b) All required street dedications along the frontage of the proposed lots will be shown on the record plat. OR There are no required street dedications along the frontage of the proposed lot.

¹ [NOTE: some of these type of applications will be referred to public agencies for approval and some are not.] The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- c) An easement will be recorded for the balance of the property noting that density and TDRs have been utilized for the new lots. This easement will be reflected on the record plat for the lots. OR The proposed lot encompasses the entire property and may not be further subdivided.²
- d) The width, shape, and orientation of the proposed lot are appropriate for the location of the subdivision. The Planning Board expressly finds that the size of the proposed lot, which is greater than 5 acres, is appropriate for the location of the subdivision and that the lot may be platted through the minor subdivision process set forth in § 50-35A of Chapter 50 of the Montgomery County Code ("Subdivision Regulations").
- e) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.
- f) The Pre-preliminary Plan No. 7-05009 substantially conforms to the _____ Master Plan.
- g) The proposed lot has adequate frontage along a public road. OR [Explanation of why no frontage is O.K. (e.g., PB approval of up to two lots on private driveway).]

CONDITIONS OF APPROVAL

Finding Pre-Preliminary Plan No. _____ in accordance with the purposes and all applicable regulations of the Montgomery County Code, the Planning Board approves _____ to be platted under the provisions of Section 50-35A(a)(8) of the Montgomery County Subdivision Regulations, subject to the following conditions:

[Conditions of Approval.]

* * * * *

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

² An easement pursuant to § 50-35A(a)(8)(c) is not required to be filed because there is no balance to the Subject Property.

Date of Mailing: _____

**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Site Plan No.:
Project:
Date of Hearing:

Action: **APPROVAL SUBJECT TO CONDITIONS.** *(Motion to approve was made by Commissioner _____; duly seconded by Commissioner _____; with a vote of - , Commissioners _____, _____, _____, voting in favor.)*

The date of this written opinion is _____ (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, thirty days from the date of this written opinion. This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On _____, Site Plan Review #8-_____ was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

THE SUBJECT PROPERTY

BACKGROUND

PROPOSED DEVELOPMENT

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

FINDINGS

Based on all of the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required.

ADD NARRATIVE ON FINDING.

2. The Site Plan meets all of the requirements of the zone in which it is located.

ADD NARRATIVE ON FINDING.

3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

ADD NARRATIVE ON FINDING.

4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

ADD NARRATIVE ON FINDING.

5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

ADD NARRATIVE ON FINDING.

PLANNING BOARD ACTION AND CONDITIONS

The Montgomery County Planning Board APPROVES Site Plan Review #8-_____ for _____ on _____ gross acres in the _____ zone with the following conditions:

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